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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/551,706	04/18/2000	F. Andrew Ubel	55019 USA 1A	2678

7590 02/04/2002

Attention: Stephen W Bauer Esq
Office of Intellectual Property Counsel
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St Paul, MN 55133-3427

EXAMINER

ARNOLD III, TROY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 02/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/551,706

Applicant(s)

Ubel et al

Examiner

Troy Arnold

Art Unit

3728



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jan 18, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

4. ☐ Applicant's reply has overcome the following rejection(s): _____
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see attached Examiner's Comment.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: as stated in the final rejection.
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
11. ☐ Other: _____

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EXAMINER'S COMMENTS

Applicant's arguments filed Jan 18, 2002 have been fully considered but they are not persuasive. Some of the specific issues raised by the Applicant are addressed below. All of the rejections made in the final rejection are maintained.

102 Rejections

Nakamura, Claim 1 -

It is submitted that Applicant's "definition" of moisture-sensitive in lines 19-21 on page 1 of the specification does not prevent the examiner from giving the term its broadest possible interpretation. Applicant has chosen a narrow definition of the term. The moisture content of Nakamura's product 3 directly affects its function and usability, therefore it may be called "moisture -sensitive." It is also noted that exposing Nakamura's product 3 to ambient humidity levels, would cause it to stiffen, to some degree.

Contrary to the remarks, there is no claim language in claim 1 that requires a segment *parallel* to the pouch length. Applicant is reading limitations into the claims. It is maintained that Nakamura teaches a moisture sensitive product 3 having a continuous length, the product 3 being folded into a configuration comprising a plurality of sections (*1 section = four segments making a helical loop*) arranged within the interior and along the pouch length, each section comprising two folds and a segment spanning therebetween, the segment also extending along the pouch

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length. *a given section of the product 3 as it is shown in Fig 13 will extend, to some degree, along the pouch length, and a given segment of a given section of the product 3 will also extend along the pouch length*, thus satisfying the limitations of the claim.

Cernohous, Claim 1 -

It is maintained that Cernohous teaches a “moisture-sensitive” product, in the broadest sense of the term, as noted above. Applicant also claims that the Office Action asserts that the “thickness of the material extends along the pouch *thickness*.” (Italics added) This is simply incorrect, as seen in the rejection above.

Nakamura, Claims 2,5-9,13-15,17-20 and 22 -

Despite the intended use scenarios envisioned by the applicant, it is maintained that Nakamura teaches all of the *distinct structural limitations* claimed in the claims.

Parker, Claim 1, 61-

It is maintained that the segment which spans the distance between the two folds has a component which is “along the pouch length” as claimed.

Parker, claims 2, 4-10 and 12-16

Once again the Applicant insists on a narrow definition of terms used in the claims, and also on intended use, or functional language from the specification.

Parker, Claim 25 -

Contrary to the remarks made on page 8, it is maintained that the compression device 36 of Parker is clearly adapted to conform the shape of the pouch to the shape of the product. It appears to be doing just that in Fig 11.

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Parker, Claims 26-28, 32 and 38-41

The compression members of Parker are capable of conforming the first end of the pouch to the shape of the product as the product is dispensed from the pouch.

103 Rejections

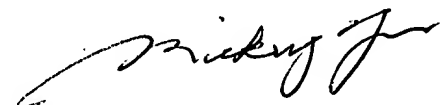
Parker, Claims 11 and 21

It is maintained that the modifications made to Parker would have been obvious to one of ordinary skill in the art at the time the invention was made. Contrary to the remarks, the Office Action does address claim 21, in the third paragraph under the 103 rejections heading.

Any specific inquiries concerning this communication or earlier communications from the Examiner may be directed to Troy Arnold at (703) 305-0621. The Examiner can normally be reached Monday through Friday 9:30am - 6pm EST. Official responses may also be faxed directly to Tech Center 3700 at (703) 872-9302, and after final responses to (703) 872-9303. Questions of a general nature may be directed to the Group Receptionist at (703) 308-1148. Tech Center 3700 Customer Service may also be reached at (703) 306-5648.

Troy Arnold

January 29, 2002



Mickey Yu
Supervisory Patent Examiner
Group 3700